

## Federal Communications Commission

DA 95-903

FCC MAIL SECTION

May 4 1995  
 Federal Communications Commission  
 Washington, D.C. 20554

DISPATCHED BY  
 MM Docket No. 93-170

In the Matter of

Amendment of Section 73.202(b), RM-8250  
 Table of Allotments, RM-8332  
 FM Broadcast Stations.  
 (Bemidji and Red Lake,  
 Minnesota)<sup>1</sup>

**REPORT AND ORDER**  
**(Proceeding Terminated)**

Adopted: April 20, 1995;

Released: May 2, 1995

By the Chief, Allocations Branch:

1. In response to a petition filed by J. Thomas Lijewski ("Lijewski"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 4276 (1993), seeking the allotment of FM Channel 238C1 at Bemidji, Minnesota. In response to the *Notice*, the Red Lake Band of Chippewa Indians ("Red Lake Band"), filed a counterproposal.<sup>2</sup> Lijewski filed comments supporting the allotment of Channel 238C1 at Bemidji. R. P. Broadcasting, Inc. ("R. P.") filed comments. Lijewski, R. P. and Red Lake Band filed reply comments.

2. Red Lake Band's counterproposal requests allotment of Channel 238C1 to Red Lake, Minnesota, located on the Red Lake Reservation, as that community's first local service. Red Lake Band believes that Bemidji is adequately served by various FM radio stations while Red Lake would receive its first local service with the allotment of Channel 238C1. In support of its proposal, Red Lake Band states that the Red Lake Reservation is currently unserved by any radio stations which air programs in the Ojibwe language, or which are directed to the unique interests and concerns of residents of Red Lake and Red Lake Reservation. Red Lake Band contends that although Red Lake is located on the Red Lake Reservation, the community possesses the necessary criteria to be considered a community for allotment purposes. According to Red Lake Band, Red Lake Reservation has a population of 6,000 people, its own municipal government which provides road maintenance, police and fire protection, trash collection, a public library and tribal courts. In addition, there are several schools, a hospital and a post office. Local businesses include a fish hatchery, saw mill, green house and a casino along with two commercial shopping centers.

3. R. P., licensee of Station WBJI(FM), Bemidji, Minnesota, opposes the allotment of Channel 238C1 at Bemidji. R. P. argues that, as an initial matter, the site proposed in the *Notice* is not suitable for use as a transmitter site. Its review indicates that the site is located within the town limits of Bemidji, in the center of Greenwood Cemetery and directly in the path of an airport runway. Further, while the *Notice* indicates the proposal will provide a third FM service to the community, R. P. contends Channel 238C1 will actually be a fifth FM service and that Station WBJI(FM), Blackduck, Minnesota, puts a city grade signal into Bemidji, while Station KLLZ-FM, Walker, Minnesota, puts at least a primary, if not a city grade coverage signal into Bemidji. Thus, R. P. believes Bemidji is well served and no need exists for another station serving the same audience, attempting to survive financially on the same limited pool of advertising revenues.

4. In reply comments, Lijewski continues to support the allotment of Channel 238C1 at Bemidji and argues that this proceeding is not an either or situation as depicted by Red Lake Band. Lijewski provided an engineering statement showing that Channel 231C1, an equivalent channel, may be allotted to Red Lake, allowing Channel 238C1 to be allotted to Bemidji. Lijewski contends that this solution will avoid a comparative analysis. In response to R. P.'s concerns over the site for Channel 238C1, Lijewski states that the site specified in the *Notice* is a theoretical site, in this case the city reference coordinates, and not necessarily the exact site that will be specified by applicants for the channel. According to Lijewski, there are approximately 4,000 square kilometers in which to place the proposed Bemidji station, including the existing tower utilized by Station KAWE(TV) and KCRB(FM). Therefore, R. P.'s claim that no suitable site exists, is misplaced and incorrect. Finally, Lijewski believes that R. P.'s economic arguments are misplaced at the rule making stage and should be disregarded.

5. R. P. filed reply comments stating its support for allotment of Channel 238C1 at Red Lake on the Red Lake Reservation. According to R. P., Bemidji enjoys a plethora of radio service while Red Lake and the Red Lake Reservation have no local service. Moreover, allotting a channel to Red Lake, as opposed to Bemidji, would be preferable from a competitive point of view. R. P. contends that allotment of the channel to Red Lake will serve a separate and distinct audience and not simply add another channel to Bemidji.

6. After consideration of the information filed in this proceeding, we believe the public interest would be served by the allotment of Channel 238C1 at Bemidji, Minnesota. Channel 238C1 can be allotted to Bemidji without a site restriction.<sup>3</sup> In response to R. P.'s concern over the proposed site for Channel 238C1, we note that the Commission endeavors to impose the least restrictive theoretical site from the intended city of license in rule making proceedings involving new allotments. Although that site must be fully spaced and provide city grade coverage to the community, it is only a theoretical site. Therefore, R. P.'s concerns are more appropriately addressed at the application stage where exact sites are known. R. P. also voiced concerns over competition in the Bemidji area.<sup>4</sup> R. P.'s

<sup>1</sup> The Community of Red Lake has been added to the caption.

<sup>2</sup> Public Notice of the counterproposal was given on September 15, 1993, Report No. 1965 (RM-8332).

<sup>3</sup> The coordinates for Channel 238C1 at Bemidji are 47-28-49 and 94-52-49.

<sup>4</sup> Stations KKBJ(AM), KBHP(AM), KBHP(FM) and KKBJ(FM)

concerns over increased competition in the Bemidji area raises issues which the Commission has already determined are not relevant in either a licensing or allotment context. *See FM Channel Assignments; Policies Regarding Detrimental Effects of Proposed New Broadcast Stations on Existing Stations*, 3 FCC Rcd 638 (1988), *recon. denied*, 4 FCC Rcd 2276 (1989). Consequently, there is no basis under the current state of Commission precedent for consideration of these issues. In a related context, there is no Commission requirement for Lijewski or any other party to demonstrate a "demand" or need for an allotment aside from the already stated willingness of Lijewski to apply for the Channel 238C1 allotment at Bemidji and construct the proposed facilities. In response to the counterproposal, we believe it would be in the public interest to allot a channel to Red Lake, Minnesota, on the Red Lake Reservation. Red Lake, Minnesota, is a Census Designated Place with a population of 1,068 people according to the 1990 U. S. Census. Red Lake has a post office, zip code and a hospital. Red Lake is located on the Red Lake Reservation which consists of 805,772 acres. Red Lake has a retail center, numerous businesses, nursing home and public works department. We believe there is sufficient indicia to conclude that Red Lake is a community for allotment purposes. It has an identifiable population grouping with businesses which identify themselves with the residents of Red Lake. *See Garrison, Kentucky*, 6 FCC Rcd 1428 (1991). A staff analysis has determined that Channel 231C1 can be allotted to Red Lake, Minnesota, in compliance with the Commission's spacing requirements.<sup>5</sup> Since Bemidji and Red Lake are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been obtained for both allotments. We believe one final matter requires comment. Even though the transmitter site for allotment purposes, for Red Lake, Minnesota, is located on the Red Lake Reservation, the Red Lake Band will have no greater rights to apply for Channel 231C1 than any other potential applicant(s). Therefore, the allotment will be made available for competing applications.

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 16, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the communities listed below, to read as follows:

Community	Channel No.
Bemidji, Minnesota	238C1, 266C1, 279C1
Red Lake, Minnesota	231C1

8. The window period for filing applications for Channel 238C1 at Bemidji and Channel 231C1 at Red Lake will open on **June 16, 1995**, and close on **July 17, 1995**.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

are licensed to Bemidji. Stations KCRB(FM), Channel 203C1, and Station KNBJ(FM), Channel 217C1, are licensed to Minnesota Public Radio at Bemidji. Bemidji State University op-

erates Station KBSB(FM), Channel 209A, at Bemidji.

<sup>5</sup> The coordinates for Channel 231C1, Red Lake, Minnesota, are 47-55-30 and 95-19-00.